

change in action will be stated in a memorandum included in the file. For example, a claim was settled for \$15,000, but the settlement agreement was typed to read “\$1,500” and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. A settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant’s legal representative, will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(b) *A successor approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary’s designees)*—(1) *Reconsideration*. A successor approval or settlement authority may reconsider the denial of, or final offer on, an MCA claim upon request of the claimant or the claimant’s authorized agent only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction*. A successor approval or settlement authority may reopen and correct a predecessor’s action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(c) *Time requirement for filing request for reconsideration*. Requests postmarked more than five years from the date of mailing of final notice will be denied based on the doctrine of laches.

(d) *Finality of action*. Action by the appropriate authority (either affirming the prior action or granting full or granting full or partial relief) is final under the provisions of 10 U.S.C. 2735. Action upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud.

Subpart D—Claims Cognizable Under the Federal Tort Claims Act

§ 536.83 Statutory authority for the Federal Tort Claims Act.

The statutory authority for this subpart is the Federal Tort Claims Act

(FTCA) (60 Stat. 842, 28 U.S.C. 2671–2680), as amended by Public Law 89–506, July 1966 (80 Stat. 306); Public Law 93–253, March 1974 (88 Stat. 50); Public Law 97–124, December 1981 (93 Stat. 1666); Public Law 100–694, November 1988 (102 Stat. 4563–67); and Public Law 101–552, November 1996 (104 Stat. 734); and as implemented by the Attorney General’s Regulations (28 CFR 14.1–14.11 and its appendix), all of which are posted on the USARCS Web site; for the address see § 536.2(a).

§ 536.84 Scope for claims under the Federal Tort Claims Act.

(a) *General*. This subpart applies in the United States, its commonwealths, territories and possessions (all herein-after collectively referred to as United States or U.S.). It prescribes the substantive bases and special procedural requirements under the FTCA and the implementing Attorney General’s regulations for the administrative settlement of claims against the United States based on death, personal injury, or damage to, or loss of, property caused by negligent or wrongful acts or omissions by the United States or its employees acting within the scope of their employment. If a conflict exists between this part and the Attorney General’s regulations, the latter governs.

(b) *Effect of the Military Claims Act*. A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under subpart C of this part if the Federal Tort Claims Act (FTCA) does not apply to the type of claim under consideration or if the claim arose incident to non-combat activities. If a claim is filed under both the FTCA and the Military Claims Act (MCA), or when both statutes apply equally, final action thereon will follow the procedures set forth in DA Pam 27–162, paragraphs 2–74 through 2–76, discussing final offers and denial letters.

§ 536.85 Claims payable under the Federal Tort Claims Act.

(a) Unless otherwise prescribed, claims for death, personal injury, or damage to, or loss of, property (real or personal) are payable under this subpart when the injury or damage is

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caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the Department of the Army or Department of Defense while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited waiver of sovereign immunity without which the United States may not be sued in tort. Similarly, neither the Fifth Amendment nor any other provision of the U.S. Constitution creates or permits a federal cause of action allowing recovery in tort. Immunity must be expressly waived, as the FTCA waives it.

(b) To be payable, a claim must arise from the acts or omissions of an "employee of the government" under 28 U.S.C. 2671. Categories of such employees are listed in § 536.23(b) of this part.

§ 536.86 Claims not payable under the Federal Tort Claims Act.

A claim is not payable if it is identified as an exclusion in DA Pam 27-162, paragraphs 2-36 through 2-43.

§ 536.87 Applicable law for claims under the Federal Tort Claims Act.

The applicable law for claims falling under the Federal Tort Claims Act is set forth in §§ 536.41 through 536.52.

§ 536.88 Settlement authority for claims under the Federal Tort Claims Act.

(a) *General.* Subject to the Attorney General's approval of payments in excess of \$200,000 for a single claim, or if the total value of all claims and potential claims arising out of a single incident exceeds \$200,000 (for which USARCS must write an action memorandum for submission to the Department of Justice), the following officials are delegated authority to settle (including payment in full or in part, or denial) and make final offers on claims under this subpart:

(1) The Judge Advocate General (TJAG);

(2) The Assistant Judge Advocate General (TAJAG); and

(3) The Commander USARCS.

(b) *ACO heads.* A head of an area claims office (ACO) is delegated authority to pay up to \$50,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding \$50,000, provided the value of all claims and potential claims arising out of a single incident does not exceed \$200,000.

(c) *CPO heads.* A head of a claims processing office (CPO) with approval authority is delegated authority to approve, in full or in part, claims presented for \$5,000 or less, and to pay claims regardless of amount, provided an award of \$5000 or less is accepted in full satisfaction of the claim.

(d) *Further guidance.* Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussions related to approval, settlement and payment authority, see paragraphs 2-69 and 2-71 of DA Pam 27-162.

(e) *Settlement of multiple claims from a single incident.* (1) Where a single act or incident gives rise to multiple claims cognizable under this subpart, and where one claim cannot be settled within the monetary jurisdiction for one claim of the authority acting on the claim or all claims cannot be settled within the monetary jurisdiction for a single incident, no final offer will be made. All claims will be forwarded, along with a recommended disposition, to the Commander USARCS.

(2) If the Commander USARCS determines that all claims can be settled for a total of \$200,000 or less, he may return claims to the field office for settlement. If the Commander USARCS, determines that all claims cannot be settled for a total of \$200,000, he must request Department of Justice authority prior to settlement of any one claim. The field claims office must not concede liability by paying any one claim of lesser value.

§ 536.89 Reconsideration of Federal Tort Claims Act claims.

(a) *Reconsideration of paid claims.* Under the provision of 28 U.S.C. 2672, neither an original or successor authority may reconsider a claim which has been paid except as expressly set forth below. Payment of an amount for